

HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, Colorado 80527-2400



**PATENT APPLICATION**

ATTORNEY DOCKET NO. 10018398-1

**IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s): Bernardo HUBERMAN et al.

Confirmation No.: 3006

Application No.: 09/976,959

Examiner: Catherine M. TARAE

Filing Date: 10/11/2001

Group Art Unit: 3623

Title: A SYSTEM AND METHOD FOR FORECASTING EVENTS WITH ADJUSTMENTS FOR PARTICIPANT CHARACTERISTICS

Mail Stop Appeal Brief-Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL OF APPEAL BRIEF**

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 10/19/2007.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$510.00.

**(complete (a) or (b) as applicable)**

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month  
\$120

☐ 2nd Month  
\$460

☐ 3rd Month  
\$1050

☐ 4th Month  
\$1640

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

☒ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
Commissioner for Patents, Alexandria, VA 22313-1450  
Date of Deposit: 12/19/2007

**OR**

☐ I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300.

Date of facsimile:

Typed Name: Jane L. Flan

Signature: [Signature]

Respectfully submitted,  
Bernardo HUBERMAN et al.

By [Signature]

John P. Wagner, Jr.

Attorney/Agent for Applicant(s)

Reg No. : 35,398

Date : 12/19/2007

Telephone : 408-377-0500



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: CHEN et al. Patent Application  
Application No.: 09/976,959 Group Art Unit: 3623  
Filed: 10/11/2001 Examiner: Tarae, Catherine Michelle  
For: A SYSTEM AND METHOD FOR FORECASTING UNCERTAIN EVENTS WITH  
ADJUSTMENTS FOR PARTICIPANT CHARACTERISTICS

APPEAL BRIEF

12/27/2007 SDIRETA1 00000014 082025 09976959  
01 FC:1402 510.00 DA

## Table of Contents

	<u>Page</u>
Real Party in Interest	1
Related Appeals and Interferences	2
Status of Claims	3
Status of Amendments	4
Summary of Claimed Subject Matter	5
Grounds of Rejection to Be Reviewed on Appeal	9
Argument	10
Conclusion	22
Appendix – Clean Copy of Claims on Appeal	23
Appendix – Evidence Appendix	28
Appendix – Related Proceedings Appendix	29

I. Real Party in Interest

The assignee of the present application is Hewlett-Packard Development Company,  
L.P.

## II. Related Appeals and Interferences

None. There are no related appeals or interferences known to the Appellants.

### III. Status of Claims

Claims 1-17 and 19-20 are pending. Claim 18 is cancelled. This Appeal involves Claims 1-17 and 19-20.

#### IV. Status of Amendments

All proposed amendments have been entered. An amendment subsequent to the Final Action has not been filed.

## V. Summary of Claimed Subject Matter

Independent Claim 1 of the present application pertains to a forecasting process. Independent Claim 9 of the present application pertains to a computer system. Independent Claim 16 of the present application pertains to a new environment aggregation function analysis process. Claim 7 depends from independent Claim 1 and further defines the forecasting process of Claim 1. Claim 8 depends from independent Claim 1 and further defines the forecasting process of Claim 1. Claim 12 depends from independent Claim 9 and further defines the computer system of Claim 9. Claim 20 depends from independent Claim 16 and further defines the new environment aggregation function of Claim 16.

Claim 1: Claim 1 recites, “[a] forecasting process ...” this embodiment is described at least on page 8, line 19 - page 19, line 10; depicted in the flow chart of forecasting method 100 of Figure 1; and depicted in the flow chart of running an information market shown in Figure 2. With respect to Claim 1, “running an information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market,” is described at least on page 9, lines 8-13 and in step 110 of Figure 1. “[E]xtracting participant characteristics through an analysis of results of trading of said financial instruments,” is described at least on page 9, line 22 - page 10, line 13 and in step 120 of Figure 1. “[P]erforming a query process in addition to said running said information market, said query process including posing a predictive query to said participants and gathering results of said predictive query, said predictive query about a probability of a future outcome occurrence associated with an uncertain situation,” is described at least on page 10 lines 15-20 and in step 130 of Figure 1. “[A]ggregating results of said query process with adjustments for said participant characteristics to produce an aggregated probability projection associated with said uncertain situation,” is described at least at page 11, line 16 - page 12, line 14 and in step 140 of Figure 1.



Claim 9: Claim 9 recites, “[a] computer system ...” this embodiment is described at least on page 8, line 19 - page 19, line 10; depicted in the flow chart of forecasting method 100 of Figure 1; and depicted in the flow chart of running an information market shown in Figure 2. With respect to Claim 9, “a memory for storing instructions on implementing a forecasting method” is described at least on page 15, lines 1-5. “[A] processor that executes said the instructions on implementing a forecasting method,” is described at least on page 15, lines 4-12. “[R]unning an information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market,” is described at least on page 9, lines 8-13 and in step 110 of Figure 1. “[E]xtracting participant characteristics through an analysis of results of trading of said financial instruments,” is described at least on page 9, line 22 - page 10, line 13 and in step 120 of Figure 1. “[P]erforming a query process in addition to said running said information market, said query process including posing a predictive query to said participants and gathering results of said predictive query, said predictive query about a probability of a future outcome occurrence associated with an uncertain situation,” is described at least on page 10 lines 15-20 and in step 130 of Figure 1. “[A]ggregating results of said query process with adjustments for said participant characteristics to produce an aggregated probability projection associated with said uncertain situation,” is described at least at page 11, line 16 - page 12, line 14 and in step 140 of Figure 1.

Claim 16: Claim 16 recites, “[a] new environment aggregation function analysis process ...” this embodiment is described at least on page 19, line 12 - page 27, line 9; page 5, lines 15-19; and depicted in the flow chart of a new environment aggregation function analysis 300 which is shown in Figure 3. With respect to Claim 16, “implementing an experimental information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market,” is described at least on page 19, line 12 - page 20, line 16; in step 310 of Figure 3; at page 20, line 22 - page 21, line 2; and at page 23, lines 10-12. “[D]eveloping a new predictive

aggregation formula with adjustments for personal characteristics of said participants, wherein said new predictive aggregation formula aggregates predictive information related to said experimental information market, said personal characteristics extracted through an analysis of results of trading of said financial instruments,” is described at least on page 20, line 18 - page 21, line 2 and at step 320 of Figure 3. “[C]reating a prediction benchmark representative of a probability distribution conditioned upon all information acts of said experimental information market,” is described at least on 21 lines 4-15; step 330 of Figure 3; and the equation for obtaining the omniscient theoretical probability benchmark which is shown on page 21. “[D]efining a measure to compare said new predictive aggregation formula with said benchmark,” is described at least at page 21, line 17 - page 22, line 12, and in step 340 of Figure 3. “[C]omparing said new predictive aggregation formula to said prediction benchmark to determine if said new predictive aggregation formula is providing beneficial information,” is described at least at page 22, line 14 - page 23, line 8; in step 350 of Figure 3; and at page 24, lines 2-15.

Claim 7: Claim 7 depends from independent Claim 1 and further defines the forecasting process of Claim 1. With respect to Claim 7, “wherein the results of the query process are aggregated by revising apriori probabilities with reports provided by participants and conditioning the reports by the characteristics of the participants” is described at least at page 9, lines 1-6 and 11, line 20 - page 12, line 2.

Claim 8: Claim 8 of the present application depends from independent Claim 1 and further defines the forecasting process of Claim 1. With respect to Claim 8, “wherein the results of the query process are aggregated by utilizing Bayes formula with each probability of said future outcome occurrence assigned by a participant modified by an exponential factor to condition the probability for adjustments associated with each participant’s characteristics” is described at least at page 12, lines 4-14.

Claim 12: Claim 12 of the present application depends from independent Claim 9 and further defines the computer system of Claim 9. With respect to Claim 12, “wherein possible information market states are associated with an Arrow-Debreu state security” is described at least at page 16, line 14 - page 17, line 22.

Claim 20: Claim 20 of the present application depends from independent Claim 16 and further defines the new environment aggregation function of Claim 16. With respect to Claim 20, “wherein three information aggregation mechanisms are compared to the benchmark distribution using a Kullback-Leibler measure,” is described at least at page 21, line 17 - page 22, line 17. “[W]herein said three information aggregation mechanisms include a no information prediction aggregation mechanism for aggregating predictions regarding said experimental information market which are based upon no information about said experimental information market,” is described at least at page 22, lines 2-4 and lines 10-15; the table shown on page 23; and by Figure 5. “[A] prediction aggregation mechanism for aggregating experimental information market predictions of a best performing participant in said experimental information market, and a prediction aggregation mechanism based upon a non-linear aggregation of experimental information market predictions of said participants with exponential factoring for characteristics of the individual participants and the experimental information market as a whole” is described at least at 22, lines 4-9 and lines 15-19, the table shown on page 23 (headings of no information, market prediction, and non-linear aggregation); and by Figure 5.

## VI. Grounds of Rejection to Be Reviewed on Appeal

1. Claims 1-6, 9-11, and 13-15 are rejected under 35 U.S.C. §102(b) as being anticipated by fantasystockmarket.com (hereinafter “FSM”).
2. Claims 16-19 are rejected under 35 U.S.C. §102(b) as being anticipated by FSM.
3. Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over FSM in view U.S. Patent Number 6,606,615 to Jennings et al. (hereinafter “Jennings”).
4. Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable over FSM in view of Jennings.
5. Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over FSM in view of Clyman, Unreasonable Rationality?, *Management Science*, Vol. 41, No. 9, Sep., 1995, pp. 1538-1548 (hereinafter “Clyman”).
6. Claim 20 is rejected under are rejected under 35 U.S.C. §103(a) as being unpatentable over FSM in view U.S. Patent Number 6,353,816 to Tsukimoto et al. (hereinafter “Tsukimoto”).

## VII. Argument

### 1. Whether Claims 1-6, 9-11, and 13-15 are anticipated under 35 U.S.C. §102(b) by FSM.

Appellants have reviewed FSM and respectfully submit that the embodiments recited in Claims 1-6, 9-11, and 13-15 are not anticipated by FSM in view of the following rationale.

Appellants respectfully direct attention to independent Claim 1, which recites that an embodiment is directed to (emphasis added):

...performing a query process in addition to said running said information market, said query process including posing a predictive query to said participants and gathering results of said predictive query, said predictive query about a probability of a future outcome occurrence associated with an uncertain situation; and aggregating results of said query process with adjustments for said participant characteristics to produce an aggregated probability projection associated with said uncertain situation.

Independent Claim 9 recites similar features. Claims 2-6 that depend from independent Claim 1, and Claims 10, 11, and 13-15 that depend from independent Claim 9 recite further features of Claim 1 and 9 respectively.

According to MPEP 2131, “to anticipate a claim, the reference must teach every element of the claim.” Further, as cited in MPEP 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Additionally, according to MPEP 2131, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

As explained by the anticipation requirements cited above, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described,

in a single prior art reference. Appellants respectfully submit that FSM fails to satisfy this *prima facie* requirement of anticipation because it does not teach, either expressly or inherently, “performing a query process in addition to said running said information market...,” (emphasis added) as recited in independent Claims 1 and 9. On page 6, lines 3-4, the 7/19/2007 Rejection contends that this is taught by “by placing a trade on a stock or mutual fund, (i.e., buy/sell), a participant is indicating their confidence or lack thereof in the future prices of the stock/mutual fund.” However Appellants disagree.

Although, a participant may be expressing confidence in a stock/mutual fund by a buy/sell action, Appellants submit that such a buy/sell action is not an example of “performing a query process in addition to said running said information market.” However, per Appellants’ understanding, such buying and selling actions are requirement for running this sort of market, rather than representing “performing a query process in addition to running said information market.” For example, the Rejection has indicated that the claim feature of “running an information market...,” as recited by Claim 1, is taught by FSM because “[p]articipants use fantasy money to trade stocks and mutual funds in a fantasy stock market” (see page 6, lines 1-4 of the 7/19/2007 Rejection). However, Appellants submit that the same acts of buying and trading stocks in a fantasy market cannot constitute both “running an information market...” and “performing a query process in addition to said running said information market... .”

Furthermore, Appellants respectfully submit that FSM fails to satisfy the above recited *prima facie* requirements of anticipation because it does not teach, either expressly or inherently, “aggregating results of said query process with adjustments for said participant characteristics to produce an aggregated probability projection associated with said uncertain situation ...,” (emphasis added) as recited in independent Claims 1 and 9. On page 6, lines 16-18, the 7/19/2007 Rejection contends that this is taught by FSM because “[p]articipants are ranked based on their trading performance. Thus the results of how they trade impact their overall standing/ranking compared with other participants.” Appellants don’t dispute that FSM ranks

participants. However, Appellants contend that that such a ranking is not the same as an aggregated probability projection associated with said uncertain situation.” At most, a percentage/ranking in FSM represents a participant’s placement among others (i.e., their ranking/standing) based upon actual results of actual trading in a fantasy stock market. Per Appellants’ understanding, a ranking in FSM which is based on an actual result is very different than a probability projection.

Moreover, per Appellants’ understanding, FSM also fails to meet the *prima facie* requirement for anticipation because it contains no teaching regarding “aggregating results of said query process with adjustments for said participant characteristics.” At best Appellants understand FSM to list rank ordered or percentage ranking results of a participant’s trading actions in comparison to other participants trading actions, without performing any sort of aggregation with participant characteristics or any other sort of data.

Therefore, Appellants respectfully assert that nowhere does FSM teach, disclose or suggest the claimed embodiments as recited in independent Claims 1 and 9, that these claims overcome the rejection under 35 U.S.C. §102(b), that the rejection under 35 U.S.C. §102(b) fails to make a *prima facie* case, and that these claims are thus in a condition for allowance. Additionally, Appellants respectfully submit that Claims 2-6, 10, 11, and 13-15 also overcome the rejection under 35 U.S.C. § 102(b), and are in a condition for allowance as being dependent on allowable base claims.

## 2. Whether Claims 16-19 are anticipated under 35 U.S.C. §102(b) by FSM.

Appellants have reviewed FSM and respectfully submit that the embodiments of the as recited in Claims 16, 17, and 19 are not anticipated by FSM in view of the following rationale.

Appellants respectfully direct attention to independent Claim 16, which recites:

implementing an experimental information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market;

developing a new predictive aggregation formula with adjustments for personal characteristics of said participants, wherein said new predictive aggregation formula aggregates predictive information related to said experimental information market, said personal characteristics extracted through an analysis of results of trading of said financial instruments;

creating a prediction benchmark representative of a probability distribution conditioned upon all information acts of said experimental information market;

defining a measure to compare said new predictive aggregation formula with said benchmark and

comparing said new predictive aggregation formula to said prediction bench mark to determine if said new predictive aggregation formula is providing beneficial information.

Claims 17 and 19 depend from independent Claim 16, and recite further features of Claim 16. Claim 18 has previously been cancelled, thus rendering rejection of this claim moot.

As explained by the anticipation requirements cited above, “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Appellants respectfully submit that FSM fails to satisfy this requirement of anticipation, because it does not teach, either expressly or inherently, “developing a new predictive aggregation formula with adjustments for personal characteristics of said participants...” as recited in Claim 16. The Rejection (page 6, lines 16-18 and page 3, lines 10-19) contends that FSM teaches this (on pages 3, 4, and 9) by tracking participant’s trading performance against other participants. However, per Appellants’ understanding, such tracking does not involve, teach, or suggest, “developing a new predictive aggregation formula with adjustments for personal characteristics of said participants...,” as recited in Claims 16. Per Appellants’ understanding, at most aspects of participant portfolio account balances, gains, and losses are tracked and ranked versus those of other participants, with no adjustments being made based on participants personal characteristics.

For example, page 4 of FSM indicates “[y]our percentage (%) gain or loss shows the percentage gain or loss of the total value of your Fantasy Balance over or below your original \$100,000.” Page 4 of FSM also indicates “[y]our fantasy ranking shows your percentage ranking



against all the Fantasy Stock Market players. Example: If your fantasy ranking is top 35% this means that 35% of the players have a Fantasy Balance equal to or higher than your Fantasy Balance...” Per Appellants’ understanding, FSM teaches no development of a predictive aggregation formula. Instead, per Appellants’ understanding only the compiling of actual results is taught by FSM. As previously indicated, Appellants understand a prediction to be very different from an actual result. Moreover, per Appellants’ understanding, FSM teaches no “predictive aggregation formula with adjustments for personal characteristics or said participants.” Per Appellants’ understanding, only participant results appear to be compiled (for example on page 9 of FSM) with no adjustments being made for personal characteristics.

Therefore, for at least the rationale described above, Appellants respectfully assert that nowhere does FSM teach, disclose or suggest the claimed embodiments as recited in independent Claim 16, that this claim overcomes the rejection under 35 U.S.C. §102(b), and that this claim is thus in a condition for allowance. Additionally, Appellants respectfully submit that Claims 17 and 19 also overcome the rejection under 35 U.S.C. §102(b), and are in a condition for allowance as being dependent on an allowable base claim.

3. Whether Claim 7 is rendered unpatentable under 35 U.S.C. §103(a) by FSM in view of Jennings.

Appellants respectfully submit that the embodiments as recited in Claim 7 are patentable over the combination of FSM and Jennings in view of the following rationale.

According to MPEP 2143.01, “[i]f the proposed modification or combination of the prior art would change the principle of operation of the invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)” (emphasis added).

Appellants submit there is no suggestion or motivation to combine FSM and Jennings for the rejection of Claims 7 and 8 under 35 U.S.C. §103(a), as the proposed modification or combination of the prior art would change the principle of operation of the invention being modified. For example, per Appellants' understanding, FSM is directed to a fantasy stock market game which ranks players by the absolute gain or loss of their portfolio (either in dollars or as a percentage) with reference to a common starting value of \$100,000 (see, e.g., pages 4, 9, and 10 of FSM).

With respect to Claim 7, the Rejection proposes combining Jennings with FSM "...to generate a more accurate estimation of the statistical distributions associated with market estimations of future outcomes, thereby enhancing the accuracy of the measure of market sentiment relating to values of the stocks and mutual funds, which enables a better ranking of participants' performance," (see pages 8 and 9 of the present Rejection). Appellants respectfully submit that such a modification to the rankings structure of FSM would change the principle of operation of FSM, which ranks participants based on absolute gains or losses of a portfolio rather than on statistical distributions. As such, the combined teachings of FSM and Jennings are not sufficient to render Claim 7 *prima facie* obvious, as the proposed modification to FSM changes the principle of operation of FSM.

Assuming for argument that such an improvement could result from combining FSM and Jennings in the manner suggested (without changing the principle of operation of FSM), the Rejection suggests the motivation for implementing the improvement is to "...enhance the integrity of the game," see page 4, lines 9-11 of the Rejection. However, per Appellants' understanding, the integrity of the game is of little or no consequence, as FSM indicates "[t]here is no right way or wrong way to play Fantasy Stock Market. Use this site as a fun and educational tool to help your knowledge of investing. Prizes for Fantasy Stock Market are awarded based upon participation, not performance, so have fun," (emphasis added) see FSM, bottom of page 4. Because the trades in FSM are based upon actual stock prices that are

delayed by 15-20 minutes (see FSM page 4) anyone with access to more current prices (rather than delayed prices) could easily be the “best” player in the game. For this reason, the game will always lack “integrity” and thus, Appellants submit that “enhancing the integrity of the game” is not a motivation for combining FSM and Jennings in the manner suggested.

4. Whether Claim 8 is rendered unpatentable under 35 U.S.C. §103(a) by FSM in view of Jennings.

Appellants respectfully submit that the embodiments as recited in Claim 8 are patentable over the combination of FSM and Jennings in view of the following rationale.

According to MPEP 2143.01, “[i]f the proposed modification or combination of the prior art would change the principle of operation of the invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)” (emphasis added).

With respect to Claim 8, the Rejection proposes combining Jennings with FSM “... to modify FSM to aggregate the results of the query process by utilizing Bayes formula...as doing so enables FSM to generate a more accurate estimation of the statistical distributions associated with market expectations of future outcomes, thereby enhancing the accuracy of the measure of market sentiment relating to values of stocks and mutual funds, which enables a better ranking of participants’ performances,” (see page 9 of the present Rejection). Appellants respectfully submit that such a modification to the rankings of FSM would change the principle of operation of FSM, which ranks participants based on absolute gains or losses of a portfolio rather than on statistical distributions. As such, the combined teachings of FSM and Jennings are not sufficient to render Claim 8 *prima facie* obvious, as the proposed modification to FSM changes the principle of operation of FSM.

Assuming for argument that such an improvement could result from combining FSM and Jennings in the manner suggested (without changing the principle of operation of FSM), the Rejection suggests the motivation for implementing the improvement is to “...enhance the integrity of the game,” see page 4, lines 9-11 of the Rejection. However, per Appellants’ understanding, the integrity of the game is of little or no consequence, as FSM indicates “[t]here is no right way or wrong way to play Fantasy Stock Market. Use this site as a fun and educational tool to help your knowledge of investing. Prizes for Fantasy Stock Market are awarded based upon participation, not performance, so have fun,” (emphasis added) see FSM, bottom of page 4. Moreover, because the trades in FSM are based upon actual stock prices that are delayed by 15-20 minutes (see FSM page 4) anyone with access to more current prices (rather than delayed prices) could easily be the “best” player in the game. For this reason, the game will always lack “integrity” and thus, Appellants submit that “enhancing the integrity of the game” is not a motivation for combining FSM and Jennings in the manner suggested.

5. Whether Claim 12 is rendered unpatentable under 35 U.S.C. §103(a) by FSM in view of Clyman.

Appellants respectfully submit that the embodiment as recited in Claim 12 is patentable over the combination of FSM and Clyman in view of the following rationale.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Appellants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel

must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Appellants respectfully direct attention to independent Claim 9 (from which Claim 12 depends). Claim 9 recites that an embodiment is directed to (emphasis added): “performing a query process in addition to said running said information market, said query process including posing a predictive query to said participants and gathering results of said predictive query, said predictive query about a probability of a future outcome occurrence associated with an uncertain situation.” Appellants submit, as described previously in conjunction with Claims 1 and 9, that FSM does not teach or suggest this feature. Rather, per Appellants’ understanding, FSM only teaches running a fantasy stock market “to purchase stocks and mutual funds,” see e.g., FSM, page 4, lines 1-17. Per Appellants’ understanding, FSM is silent regarding “performing a query process in addition to said running said information market,” as is recited in Claim 9.

Appellants submit that the addition of Clyman fails to cure this deficiency. For example, per Appellants’ understanding, nothing in Clyman teaches, suggests, or motivates, “performing a query process in addition to said running said information market,” as is recited in Claim 9. Further, Appellants submit that the combination of FSM and Clyman does not teach, describe, or suggest such a feature. Moreover, no explanation is provided in the Rejection as to why these differences (and overcoming them) between the claimed feature and the combination of FSM and Clyman would have been obvious to one of ordinary skill in the art. Thus for these reasons, Appellants submit the combination of FSM and Clyman does not render obvious the features of Claims 9. As Claim 12 depends from Claim 9, Appellants submit that Claim 12 is allowable over the combination of FSM and Clyman by virtue of dependence upon an allowable base claim.

Further, attention is directed to Claim 12 which recites “wherein possible information market states are associated with an Arrow-Debreu state security.” The Rejection (page 10) contends that Clyman discloses market games being associated with an Arrow-Debreu state security. Appellants disagree with the Rejection’s characterization of the teachings of Clyman. Per Appellants’ understanding, Pages 4-5 of Clyman make no mention of market games being associated with Arrow-Debreu securities. Instead, Appellants understand Clyman to explore the concept how fractional demands change upon exogenous changes in security returns and wealth (See, e.g., Page 1 of Clyman) and merely describe some example theoretical security trading scenarios (see pages 2 and 3 and Figures 1 and 2 of Clyman) to illustrate the concept of the Arrow-Debreu security. Although, page 4 of Clyman mentions that, “An Arrow-Debreu security is -- named in honor of the two economists who developed the idea of complete markets -- is a lottery the pays in one and only one state,” Appellants submit that such a statement is not a disclosure of market games being associated with an Arrow-Debreu state security.

Moreover, according to MPEP 2143.01, “[i]f the proposed modification or combination of the prior art would change the principle of operation of the invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. The Rejection (page 10) contends that “...it would have been obvious to a person of ordinary skill in the art to modify FSM so that its information market states are associated with an Arrow-Debreu state security as Arrow-Debreu securities allow participants to trade in a single state, thereby simplifying the game for participants.” However, Appellants submit that such a modification to FSM would alter the principle of operation of the trading in FSM, which consists of buying and selling stocks and mutual funds based upon “prices of real stocks from the NASDAQ, American Stock Exchange, New York Stock Exchange, etc., delayed 15-20 minutes,” (see FSM page 4) and tracking “...a gain or loss of the total value of your Fantasy Balance over or below your original \$100,000,” (see page 4 of FSM, and the example shown on page 9 of FSM). Thus, even if the suggested modification of FSM in view

of Clyman resulted in a simplified game, such a modification would significantly change the operation of the game as outlined in FSM from trading stocks and mutual funds at delayed list prices and tracking a gain or loss, to a game which a participant did something such as place a guess on one of two market states and the accuracy of their guesses was tracked. Appellants submit such modification substantially changes the principle of operation of the fantasy stock market game described by FSM, and thus the combination of FSM and Clyman in such fashion is insufficient to render Claim 12 *prima facie* obvious.

6. Whether Claim 20 is rendered unpatentable under 35 U.S.C. §103(a) by FSM in view of Tsukimoto.

Appellants respectfully submit that the embodiment as recited in Claim 20 is patentable over the combination of FSM and Tsukimoto in view of the following rationale.

Appellants respectfully direct attention to independent Claim 16, which recites that an embodiment of is directed to (emphasis added): “developing a new predictive aggregation formula with adjustments for personal characteristics of said participants ... .” Appellants submit, as described previously, in conjunction with Claim 16, that FSM does not teach or suggest this feature. The Rejection (page 6, lines 16-18 and page 3, lines 10-19) contends that FSM teaches this (on pages 3, 4, and 9) by tracking participant’s trading performance against other participants. However, per Appellants’ understanding, at most FSM describes that aspects of participants actual portfolio account balances, actual gains, and actual losses are tracked and ranked versus those of other participants, with no adjustments being made based on participants personal characteristics and no predictive aggregation formula being developed. Additionally, as previously explained, Appellants submit that tracking actual results is very different than “developing a new predictive aggregation formula with adjustments for personal characteristics of said participants,” as recited in Claim 16.

The addition of Tsukimoto fails to cure this deficiency. Per Appellants' understanding, Tsukimoto may teach a neural network analysis method and apparatus (col. 1, lines 8-10 of Tsukimoto). However, per Appellants' understanding, neither Tsukimoto nor the combination of FSM and Tsukimoto teaches or suggests, "developing a new predictive aggregation formula with adjustments for personal characteristics of said participants...", as recited in Claim 16. Appellants submit that the addition of the Tsukimoto art does not resolve the problem that tracking actual results, as described by FSM, is very different than "developing a new predictive aggregation formula with adjustments for personal characteristics of said participants," as recited in Claim 16. Moreover, no explanation is provided in the Rejection as to why the differences (or overcoming them) between the claimed feature and the combination of FSM and Tsukimoto would have been obvious to one of ordinary skill in the art. Thus for these reasons, Appellants submit the combination of FSM and Tsukimoto does not render obvious the features of Claims 16. As Claim 20 depends from Claim 16, Appellants submit that Claim 20 is allowable over the combination of FSM and Tsukimoto by virtue of dependence upon an allowable base claim.



### Conclusion

Appellants believe that pending Claims 1-17 and 19-20 are patentable over the cited art. As such, Appellants respectfully request that the rejections of Claims 1-17 and 19-20 be reversed.

The Appellants wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellants' undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,  
WAGNER BLECHER LLP



Dated: 12/19/2007

---

John P. Wagner  
Registration No. 35,398  
123 Westridge Drive  
Watsonville, CA 95076

Phone: (408) 377-0500  
Facsimile: (831) 722-2350

### VIII. Appendix - Clean Copy of Claims on Appeal

1. A forecasting process comprising:

running an information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market;

extracting participant characteristics through an analysis of results of trading of said financial instruments;

performing a query process in addition to said running said information market, said query process including posing a predictive query to said participants and gathering results of said predictive query, said predictive query about a probability of a future outcome occurrence associated with an uncertain situation; and

aggregating results of said query process with adjustments for said participant characteristics to produce an aggregated probability projection associated with said uncertain situation.

2. A forecasting process of Claim 1 wherein said information market is designed to elicit characteristics of participants.

3. A forecasting process of Claim 2 wherein said characteristics include participant risk inclination.

4. A forecasting process of Claim 2 further comprising utilizing different scenarios wherein said participants are presented with different information and wherein said characteristics include participants ability to identify and respond to quality of said information provided in said information market.

5. A forecasting process of Claim 2 further comprising correlating observed behavior to accepted characteristic tendencies.

6. A forecasting process of Claim 2 wherein said information market includes an artificial market financial instrument corresponding to a real world state.

7. A forecasting process of Claim 1 wherein the results of the query process are aggregated by revising apriori probabilities with reports provided by participants and conditioning the reports by the characteristics of the participants.

8. A forecasting process of Claim 1 wherein the results of the query process are aggregated by utilizing Bayes formula with each probability of said future outcome occurrence assigned by a participant modified by an exponential factor to condition the probability for adjustments associated with each participant's characteristics.

9. A computer system comprising:  
a memory for storing instructions on implementing a forecasting method; and  
a processor that executes said the instructions on implementing a forecasting method,  
including:

running an information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market;

extracting participant characteristics through an analysis of results of trading of said financial instruments;

performing a query process in addition to said running said information market, said query process including posing a predictive query to said participants and gathering results of said predictive query, said predictive query about a probability of a future outcome occurrence associated with an uncertain situation; and

aggregating results of said query process with adjustments for said participant characteristics to produce an aggregated probability projection associated with said uncertain situation.

10. A computer system of claim 9 wherein said processor and memory are communicatively coupled to the Internet and participants interact with said forecasting computer system via the Internet.

11. A computer system of claim 9 wherein running said information market comprises:

organizing participants;  
creating a financial instrument; and  
establishing a mechanism for permitting participants to interact in said information market.

12. The computer system of Claim 9 wherein possible information market states are associated with an Arrow-Debreu state security.

13. The computer system of Claim 9 wherein said information market artificial instruments correspond to the occurrence of a real world state.

14. The computer system of Claim 11 wherein said information market comprises an artificial call market in which securities are traded.

15. The computer system of Claim 14 wherein running said information market further comprises:

gathering the bids and asks at the end of a call round;  
determining a market price and volume;

completing transactions; and  
beginning another call round.

16. A new environment aggregation function analysis process comprising:  
implementing an experimental information market including an artificial market in which financial instruments are utilized, wherein said financial instruments are traded by participants in said information market;

developing a new predictive aggregation formula with adjustments for personal characteristics of said participants, wherein said new predictive aggregation formula aggregates predictive information related to said experimental information market, said personal characteristics extracted through an analysis of results of trading of said financial instruments;

creating a prediction benchmark representative of a probability distribution conditioned upon all information acts of said experimental information market;

defining a measure to compare said new predictive aggregation formula with said benchmark and

comparing said new predictive aggregation formula to said prediction bench mark to determine if said new predictive aggregation formula is providing beneficial information.

17. A new environment aggregation function analysis process of claim 16 wherein said new predictive aggregation formula is utilized in a forecasting process.

19. A new environment aggregation function analysis process of claim 16 wherein said adjustments include individual participant predictions with exponential factoring for characteristics of the individual participants and the experimental information market as a whole.

20. A new environment aggregation function analysis process of claim 17 wherein three information aggregation mechanisms are compared to the benchmark distribution using a Kullback-Leibler measure, wherein said three information aggregation mechanisms include a no information prediction aggregation mechanism for aggregating predictions regarding said experimental information market which are based upon no information about said experimental information market, a prediction aggregation mechanism for aggregating experimental information market predictions of a best performing participant in said experimental information market, and a prediction aggregation mechanism based upon a non-linear aggregation of experimental information market predictions of said participants with exponential factoring for characteristics of the individual participants and the experimental information market as a whole.

## IX. Evidence Appendix

None. No evidence is herein appended.

X. Related Proceedings Appendix

None. No related proceedings are herein appended.